

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

ePLUS, INC.,

Plaintiff,

[illegible]

Civil Action No. 2:09cv232-HCM-TEM

V.

LAWSON SOFTWARE, INC.,

Defendant.

**PLAINTIFF ePLUS, INC.’S MOTION TO COMPEL DISCOVERY FROM
DEFENDANT LAWSON SOFTWARE, INC.**

Pursuant to Fed. R. Civ. P. 37 and Local Rule 37, Plaintiff *ePlus, Inc.* (“*ePlus*”) respectfully moves for an Order of the Court compelling Defendant Lawson Software, Inc. (“*Lawson*”) to provide discovery in this patent infringement action. Notwithstanding several “meet and confer” discussions and correspondence between the parties, and commitments by Lawson to address deficiencies in its discovery, to date Lawson has not provided complete substantive answers to several interrogatories pertaining to some of the most fundamental issues in the case. Likewise, to date Lawson has not produced documents pertaining to several significant topics of discovery. These discovery deficiencies include, among others:

- Lawson has not provided a sufficient answer to an important interrogatory asking that it identify all of the various products that it has sold that perform certain specified functions that are recited in the claims of the patents-in-suit.
- For most of the alleged “prior art” that Lawson has asserted in this case in support of its invalidity defense, Lawson has not provided claim charts or any explanation how these references allegedly apply to invalidate any of the claims of the patents-in-suit.
- Lawson has not provided any substantive response to several additional interrogatories relating to, *inter alia*, its defense of patent invalidity under Section 112 of the patent laws, and other theories of invalidity.
- Lawson has not produced documents pertaining to its own patent applications relating to the technology at issue in this case, some of which likely contain descriptions of Lawson’s accused products.
- Lawson’s document production is markedly deficient with respect to financial information relating to its accused products, which information is critical to damages issues. Moreover, Lawson’s answer to an interrogatory relating to the revenues for its accused products simply identifies, pursuant to Rule 33(d), a handful of outdated license agreements that are woefully inadequate to respond to the interrogatory.
- Lawson has not produced a significant amount of e-mail correspondence with its document production to date.
- Lawson has not produced documents pertaining to its competition with *ePlus* for electronic sourcing and procurement contracts, including responses to requests for proposals from prospective customers of the two parties.

ePlus has conferred with Lawson with respect to the deficiencies set forth in this motion. Counsel for ePlus hereby certifies, pursuant to Local Rule 37(E), that it has made a good faith effort to resolve the discovery matters at issue with counsel for Lawson.

ePlus respectfully requests that the Court compel Lawson to provide the requested discovery immediately. If appropriate, and depending on when the Court rules on this motion and orders that Lawson provide the discovery at issue, ePlus also asks that it be given leave to supplement its infringement and damages expert reports pursuant to Rule 26(e) in order to address any late-provided discovery. ePlus further requests that it be permitted to resume any relevant depositions, at Lawson's expense, in order to question the witnesses about the late-provided discovery. A [Proposed] Order is attached for the Court's consideration.

Respectfully submitted,

Date: September 24, 2009

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2009, I will electronically file Plaintiff ePlus, Inc.'s Motion to Compel Discovery from Defendant Lawson Software, Inc., with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record:

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